

**Webster Zoning Board of Appeals  
Meeting Minutes – January 12, 2022**

A meeting of the Webster Zoning Board of Appeals was held via remote participation / Zoom on January 12, 2022 in accordance with Governor Baker's June 16, 2021 Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency.

**Present:** Chairman Jason Piader, Vice Chairman Dan Cournoyer, Clerk Chris Daggett, and Members Mark Mason and Dan Fales.

**Also Present:** Ann Morgan, Director of Planning & Economic Development

**1. Call to Order:** Chairman Piader called the meeting to order at 6:12 p.m. and read the notice posted on the agenda regarding the remote participate meeting noting the it was being recorded for the purpose of taking minutes and asked if anyone was recording the meeting. Martin Konkel noted that he was recording but did not know how to stop his machine from doing so. Mr. Piader asked Ms. Morgan to take attendance by roll call vote: Mr. Mason – yes; Mr. Daggett – yes; Mr. Cournoyer; Mr. Fales – yes; Mr. Piader – yes.

Mr. Piader noted that this meeting was originally scheduled for January 7, 2022 to be held in person. The decision was made to reschedule to January 12, 2022 due to the increase of COVID cases and that it was felt to be prudent to hold the meeting via remote participation instead. He further noted the February 7, 2022 meeting would also be held via remote participation.

**2. Action Items**

**a. Approval of Meeting Minutes of December 7, 2021**

Mr. Piader asked if there were any edits to the draft meeting minutes. There were none.

Motion to approve the draft meeting minutes of December 7, 2021 as drafted made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously 4-0-1 by roll call vote: Mr. Mason - yes; Mr. Daggett – yes; Mr. Fales - yes; Mr. Piader – yes; Mr. Cournoyer - abstain.

**b. Draft Decision: Variance Application – 60 Colonial Road – Bryan Pelletier (Applicant/Owner); Assessor ID 39-A-54-0. Applicant is seeking relief from the front yard setback requirement to construct a garage with a residential living unit above. Said site is located in the Lake Residential (LR) and Lake Watershed Protection (LWP) zoning districts.**

Ms. Morgan noted that Mr. Cournoyer was not eligible to vote as no Mullin Certification was submitted. That would leave the four other members eligible to vote. Mr. Piader asked Mr. Cournoyer if he wished to partake in the vote which would require the decision to be postponed to a later meeting. Mr. Cournoyer stated that he was fine with the Board moving forward with making the decision without his vote.

The Board reviewed Findings F1 through F10. Mr. Piader asked if there were any edits or discussion. There was none. Motion to approve Findings F1 through F10 made by Mr. Mason, seconded by Mr. Fales. Motion passed unanimously 4-0-1 by roll call vote: Mr. Mason - AYE; Mr. Daggett – AYE; Mr. Fales - AYE; Mr. Piader – AYE; Mr. Cournoyer - ABSTAIN.

The Board reviewed Finding F11. Mr. Piader found that that the small and unique lot shape constricts the placement of the garage to a very narrow location and that the steep slope to the rear of the lot, which was noted by the Conservation Commission to be 45 degrees in slope, creates a unique topography that would force any structure towards the front of the lot. This does not generally does

not affect properties in the Lake Residential District. Mr. Piader asked the Board if there were any additional findings, comments or discussion. There was none.

Motion to find that the Applicant has demonstrated that there are unique site conditions made by Mr. Mason, seconded by Mr. Fales. Motion passed unanimously 4-0-1 by roll call vote: Mr. Daggett – AYE; Mr. Mason – AYE; Mr. Fales – AYE; Mr. Piader – AYE; Mr. Cournoyer – ABSTAIN.

The Board reviewed Finding F12. Mr. Piader found that the literal enforcement of the front yard setback would cause the Applicant to incur a financial burden as the Applicant would have to fill in due to the 45 degree slope at the rear of the lot and the unique site conditions. Mr. Piader asked the Board if there were any additional findings, comments or discussion. There was none.

Motion to find that the Applicant has demonstrated that there are unique site conditions made by Mr. Mason, seconded by Mr. Fales. Motion passed unanimously 4-0-1 by roll call vote: Mr. Daggett – AYE; Mr. Mason – AYE; Mr. Fales – AYE; Mr. Piader – AYE; Mr. Cournoyer – ABSTAIN.

The Board reviewed Finding F13. Mr. Piader found that the literal enforcement of the front yard setback would cause the Applicant to incur a financial burden as the Applicant would have to fill in due to the 45 degree slope at the rear of the lot and the unique site conditions. Mr. Piader asked the Board if there were any additional findings, comments or discussion. There was none.

Motion to find that the Applicant has demonstrated that there are unique site conditions made by Mr. Mason, seconded by Mr. Fales. Motion passed unanimously 4-0-1 by roll call vote: Mr. Daggett – AYE; Mr. Mason – AYE; Mr. Fales – AYE; Mr. Piader – AYE; Mr. Cournoyer – ABSTAIN.

The Board reviewed Finding F14. Mr. Piader found that a single family dwelling with a garage will not substantially derogate from the Webster Zoning By-law. A single family dwelling with a garage is an allowed use within the Lake Residential zone. Mr. Piader asked the Board if there were any additional findings, comments or discussion. There was none.

Motion that the variance request does not nullify or substantially derogate from the intent and purpose of the Zoning By-law made by Mr. Mason, seconded by Mr. Fales. Motion passed unanimously 4-0-1 by roll call vote: Mr. Daggett – AYE; Mr. Mason – AYE; Mr. Fales – AYE; Mr. Piader – AYE; Mr. Cournoyer – ABSTAIN.

The Board reviewed the draft conditions of approval. Ms. Morgan noted that an additional condition C5, was required. This condition would outline the period of validity as stated in Massachusetts general law noting that the variance was valid for one year and that an additional six month extension could be granted by the Board if the Applicant applied for such extension prior to the expiration date of the variance. Mr. Piader asked the Board if there were any additional findings, comments or discussion. There was none.

Motion to grant the variance with Conditions C1 through C4 as drafted and with the addition of new condition C5 regarding the period of validity made by Mr. Mason, seconded by Mr. Fales. Motion passed unanimously 4-0-1 by roll call vote: Mr. Daggett – AYE; Mr. Mason – AYE; Mr. Fales – AYE; Mr. Piader – AYE; Mr. Cournoyer – ABSTAIN.

### **3. Public Hearings**

- a. Variance Application – 62 Blueberry Hill – Jay Gallant / Gallant Architects (Applicant); Jessica and Drew Mason (Owners); Assessor ID 65-A-46; Owner is seeking a side yard setback variance for newly constructed single family house; property is located within both an Agricultural Single Family Residential (ASFR) and Lake Watershed Protection (LWP) zoning districts. Continued from 12/7/21.

Mr. Piader asked Ms. Morgan to present the staff report. She reviewed the new material submitted by staff including an overview of permits issued by the building department, the site plan submitted as part of the building permit application and Planning Department comments submitted during the permit process. Ted Tetreault, Building Commissioner, was present. Mr. Piader asked him to review the series of events that led to the house being situated in the side yard setback. Mr. Tetreault explained that steps were missed. The excavation proceeded and then the foundation was poured. He noted that typically they over dig the area by approximately 3 feet to allow for the foundation forms to be set in place. In this case, the over dig resulted in things getting shifted. It was then the responsibility of the engineer to submit an as built plan showing that the foundation was in the correct place and that there wasn't any violation. Once the foundation as-built plan is approved he will permit the framing to commence. Unfortunately he never received that inspection request. They went ahead and backfilled the foundation and proceeded and then requested a framing inspection. At that point the structure was up, fully sided with a roof. Mr. Tetreault noted that, as far as he was concerned, the project engineer is at fault for not submitting the as built foundation plan. If it had been submitted the error would have been caught early and corrections could be made. Mr. Piader asked if this would be considered negligence on the part of the person responsible for overseeing the project to which the answer was yes.

Mr. Piader the Board if they had any additional questions for Mr. Tetreault. There were none. Mr. Piader asked the Applicant to review any new information since the last meeting. Nick Adamopoulos spoke on behalf of the Applicant. He noted that the problem was not created by the home owner who were unaware there was a problem until October 16, 2021 after the building had been constructed, sided, roofed. On October 18<sup>th</sup> the owners and the architect self-disclosed the problem to Mr. Tetreault who came out to the site and observed the situation. No stop work order was issued. Three days later, Mr. Tetreault issued the permit for insulation. He noted that the building was site and constructed in a manner to fit into the conditions of the lot which is at the end of the road and off the cul-de-sac. It was angled to face the cul-de-sac similar to the other houses in the area. Unfortunately, and due to the fault of the engineer, the garage encroached into the side yard setback area by 1.8 feet. The lot is next to an undeveloped lot owned by Mr. Stefaniak who was at the last meeting. Mr. Adamopoulos has since spoken with Mr. Stefaniak who told him that he would not personally oppose or raise any objection to the request for a slight variance. The house is being built on the last developable lot up on Blueberry Hill which will bring in some cash for the Town. Mr. & Mrs. Mason have been lifelong residents of the Town. The building fits into the general scheme of Blueberry Hill. This problem was not caused by the homeowners themselves, they self-disclosed when they became aware of the problem, and the building is complete. For these reasons they are asking for the variance which will allow them to move in.

Mr. Piader asked Mr. Adamopoulos if the shape of the lot was a factor in how the house was situated resulting in the need for the variance. Mr. Adamopoulos noted that the siting of the house was designed to face the cul-de-sac to reflect what the other properties are doing. It appears that the foundation was dug and backfilled in a way that caused the structure to seep into the setback.

Mr. Piader asked if any members of the Board had any questions for comments for the Applicant. There were none. He asked if any members of the public had any comments. Jay Gallant, architect for the project and applicant for the variance. He noted that the miscommunication was his mistake. He referred to the plan which was displayed on the screen and pointed out that there was no wiggle room where the corner of the garage was located very close to the setback line. They had adjusted the size of the garage to fit but, unfortunately, when the site was laid out the house ended up going over

the setback line. The shape of the lot and the orientation of the house as it relates to it to face the cul-de-sac made most of the garage compliant except the corner. They feel that it's a fairly unique case since the lot is at the end of the cul-de-sac. He and the homeowners believe that the variance could be granted based on the shape of the lot.

Mr. Piader asked if there were any additional comments from the Board of the public. There were none. He asked if the Applicant had any final comments. Mr. Adamopoulos summarized previous comments and requested that the Board grant the variance. There were no further comments or questions.

Motion to close the public hearing and direct staff to draft a decision made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote: Motion passed unanimously 5-0 by roll call vote: Mr. Daggett – AYE; Mr. Mason – AYE; Mr. Fales – AYE; Mr. Cournoyer – AYE; Mr. Piader – AYE.

- b. Public Hearing 3B - Variance Application – 70 Bates Point Road – Hadeer Shaikhly (Applicant/Owner); Assessor ID 50-A-37-0; Owner is seeking a front yard setback variance to construct a new single family house. Said site is located within both a Lake Residential (LR) and Lake Watershed Protection (LWP) zoning districts.

Mr. Piader opened the public hearing. Mr. Daggett read the public hearing notice. Mr. Piader asked for a staff review. Ms. Morgan reviewed the staff memo regarding the request for the front yard setback variance noting that, based on the Lake Residential zoning district regulations, the front yard setback for this property is to be 46.19 feet. She reviewed the methodology used to arrive at that calculation and photos of the neighborhood which was presented in the staff memo and displayed on the screen for all to see. She noted that the Applicant's engineer was present on the call and had submitted their own set of calculations just that day. She reviewed the plan set which showed the existing and proposed conditions including the proposed house. The calculation is based on the distance to the front property line, not the road as the right of way area must also be excluded. Ms. Morgan noted that she has explained to both the Applicant and their engineer that, if the variance is granted, they will also need to obtain a Special Permit from the Planning Board for exceeding the lot coverage allowance in the Lake Residential district. There were no questions from the Board. Mr. Piader asked the Applicant to review the application.

Attorney George Kiritsy, representing the Applicant, noted that Mr. Shaikhly and the engineer and project manager, Lesley Wilson of HST, were both present. He noted this case, similar to the previous case discussed by the Board, 60 Colonial Road, regarding a front yard setback variance in the Lake Residential zoning district. The lot is relatively narrow from the road to the Lake. Mr. Shaikhly is seeking to build what he hope will be his final family residence by constructing a new single family residence with an attached garage which would be closer to the road. Mr. Kiritsy noted that the zoning requires a minimum setback of 20 feet from the road and that the required distance is a little over 46 feet based on the calculation required in the district regulations. Mr. Shaikhly is seeking relief so that he can use the 20 foot setback instead. This is consistent with the two lots to the right which are similarly situated. The variance would allow him to keep the house further away from and no closer to the pond and still put in home that satisfies Mr. Shaikhly's needs. Mr. Kiritsy noted that the garage would allow his client to pull in under cover during poor weather. The narrow width of the lot does not have enough room to accommodate both the house and the garage and keep within the required setback. The garage has to be put in the front of the house which causes the whole structure to go from

the street to the pond. Mr. Shaikhly is a physician who gets called out at night for emergencies. The time needed to clean snow off the car and clearing off a longer driveway is time that Mr. Shaikhly would like to spend traveling to the hospital to address those emergencies. Mr. Shaikhly plans to have this be his permanent residence with first floor bedroom and to have his elderly father live with him. A house with an attached garage would be more convenient for the elderly father and more suitable for the family situation. They don't want to push the house too far back on the lot because of the slope at the rear of the lot to the pond which would require a significant elevation change. In addition, they want to keep the house further from the pond for conservation reasons and to not block other peoples' views. Mr. Kiritsy noted that there were at least 12 letters of support from the abutters and neighbors in the area which supports the variance. The proposed house will be no closer than the immediate house to the right, doesn't further encroach towards the pond and won't further impact the view shed which is why they want to put it closer to the street. The cost to build an elevated garage that would accommodate this property would be extraordinary, require incredible engineering, and would probably render the property unsuitable for a single family residence purposes. Without the variance, it doesn't yield the promise that Mr. Shaikhly is looking for from his property. He suggested that the slope constitutes a bit of a hardship which is not too dissimilar to the 60 Colonial Road case. Regarding parking which has been a concern, whether parking in the garage or in the driveway, it's going to be the same level of parking provided for this residence. There's room for parking four cars whether in the garage or in the driveway it's the same situation. The variance would allow them to put two of those cars in a garage for access and convenience and comfort.

Mr. Piader asked the Board if they had any questions. There were none. Mr. Piader asked about the slope at the rear of the lot and how that impacts this project. Is it unique if looking at other properties in the Bates Point Road area as one approaches the water or is that slope unique to the Applicant's lot? Ms. Wilson noted that the existing slope at the rear of the lot is approximately 16% from the house to the edge of the Lake. Mr. Piader asked if the other lots in the area have a similar slope or is that slope unique to the 70 Bates Point Road property. Mr. Shaikhly noted that Bates Point Road has a little hill and then slopes to the end of the street. His property is the high point of that hill and is the highest point from the house to the water. Mr. Wilson noted that the elevation drops from about 494 feet at the road to 480 feet at the water which is a significant drop in the back. Mr. Kiritsy noted the sloping gets worse as you approach the pond. The slope is gentle at the street and more severe as you move towards the back of the lot and closer to the pond. Mr. Piader asked if moving the house twenty feet towards the water would be a substantial financial hardship causing a drastic increase in costs to the project to which the answer was yes. Mr. Kiritsy noted that it would not be good for the neighbors because it would impact their view sheds. Moving the structure closer to the street would have less adverse impacts to the neighbors which is why they want to pull it as close to the street as they can. Ms. Wilson stated the plan was not changing the direction of groundwater flow. The grades will be going in the same direction as they are now. Mr. Piader asked if there were any other questions from the Board. There were none. He opened the floor to comments from the audience.

Martin Konkel, 58 Bates Point Road, addressed the Board. He stated that there are no other garages within 20 feet of the roadway on Bates Point Road that he was aware of especially on lots that are 170 feet long. There are some tight spaces at you get to the very end of the road where lots are very short. Mr. Konkel stated his belief that the proposed project will take away from property values for adjacent properties. He noted that his garage was approximately 30 feet from the road and doesn't see why the proposed garage has to be at 20 feet. Most people building houses this size will go up with the house so that they have the square footage they need to meet the zoning requirements. Forty six feet is pretty far from the road but 20 feet is too close. He stated that the architect should find a way to decrease

that footage and that 30 feet is more appropriate. The proposed house for this lot is pretty substantial. He asked if the proposed 20 feet measurement was to the foundation or to the roof eave. How close are they really coming to the road? Mr. Konkel closed his remarks his belief that the project will district from property values, especially for adjacent properties, if they are allowed to go to 20 feet. Building codes and zoning ordinances should be followed. People shouldn't be able to decide that they want a bigger house and not meet the requirements. In his opinion, 30 feet would be acceptable, but 20 feet is too close to the road. He noted that he understood the slope issue and that some lots in the area have some pretty steep slopes. The architect should be able to design a livable house, do something with the front yard to make it accessible, and have the people be satisfied without the house being 20 feet from the road. Ms. Wilson noted the, based on the way the regulations read, the carport is considered a part of the building. The proposed car port is 20 feet from the road. The actual house and garage is 40 feet from the road. Based on the 20 feet they have to show where the carport begins. The actual building itself is approximately 40 feet from the road in the front yard setback. Mr. Konkel asked if the carport is just a roof structure to which Ms. Wilson responded yes. Mr. Shaikhly stated that he wasn't sure if they were going to construct the carport. He noted that depending on the plan of the house and priorities they want to make sure they have a proper house plan with wheelchair accessible hallways and a bedroom on the first floor. This would take the space planned for the carport. He's not sure there will be a carport. Mr. Shaikhly noted that the 20 feet would be very similar to the neighbors at 68 and 66 Bates Point Road and it's going to be a garage and not a foundation. The house foundation will not be at 20 feet, that's the garage. Mr. Piader noted that the application shows the structure at 20 feet.

Mr. Piader asked if there were comments from other members of the audience. Frank Yacino, 72 Bates Point Road, addressed the Board. He had some reservations as to why they were here tonight to discuss the variance. By moving the building closer to the road it will take away the minimal parking space on the existing lot as it would tend to put parking on the road which would block driveways of other people. At the last meeting (where the Special Permit for the side yard setback was discussed), the Board established the 46 foot from the road in accordance with the Town's regulations and now the property owner wants to negate that requirement. Rules and laws are meant to be followed and not amended to suit any one person. He trusts the Board will honor what was recommended at the previous meeting. He noted that, right now, we do not know where the water fall from the rain around the house and off of the roof would be going and, depending on the grading of land, it could overflow onto his land at 72 Bates Point Road which is his concern. No one seems to know if there will be a lower level or a slab on grade of the proposed house based on what's there. Excavation will be required to go down a minimum of 4 feet for a foundation wall to be built. If this happens, where will all the excavation material be placed on this small lot? He thanked the Board for letting his concerns be known.

Mr. Piader asked if there were any further comments from the Board or the public. There were none. He asked the Applicant if they wished to make a final statement. Mr. Kiritsy summarized why they were seeking a variance noting the Mr. Shaikhly wants to build the house for himself and his family to live there and enjoy the Town like others do. He noted that they would be respectful, that the house would be beautiful, and that he needs the zoning relief to do so. He noted that they were aware that they would need to go to the Conservation Commission where concerns from the abutter would be addressed. Drainage would be addressed and they recognize that additional relief would be required in the form of a Special Permit for lot coverage. This was one of many steps required and that there was another section of the Zoning By-law which requires relief. There were no further comments or questions.

Motion to close the public hearing made by Mr. Cournoyer, seconded by Mr. Fales. Mr. Piader asked if there was any discussion from the Board. There was none. Motion passed unanimously 5-0 by roll call vote Mr. Daggett – AYE; Mr. Mason – AYE; Mr. Fales – AYE; Mr. Cournoyer – AYE; Mr. Piader – AYE.

- c. Public Hearing 3C - Variance Application – 200 Gore Road – Webster Ventures, LLC (Applicant/Owner); Assessor ID 60-D-17; Owner is seeking a side yard setback variance to move the property line to bring an existing pavilion onto the property located at 200 Gore Road. Said site is located within both a Business 5 (B5) and Lake Watershed Protection (LWP) zoning districts. Continued from 12/7/21.

Mr. Piader opened the public hearing. Mr. Piader noted that there were procedural issues relating to this application and the application for 27 Lakeview Road scheduled to be heard tonight. Mr. Daggett read the public hearing notice. Mr. Piader noted that the Board accept a request to extend the decision deadline for this application until March 23, 2022 so that the Board could hear both the application for 200 Gore Road concurrently with the application for 27 Lakeside Road.

Motion to accept the Applicant's request to extend the decision deadline for 200 Gore Road to March 23, 2022 made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote Mr. Daggett – AYE; Mr. Mason – AYE; Mr. Fales – AYE; Mr. Cournoyer – AYE; Mr. Piader – AYE.

Motion to open the public hearing for 200 Gore Road concurrently with the hearing for 27 Lakeview Road made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote Mr. Daggett – AYE; Mr. Mason – AYE; Mr. Fales – AYE; Mr. Cournoyer – AYE; Mr. Piader – AYE.

- d. Public Hearing 3C - Variance Application – 27 Lakeview Road – Webster Ventures, LLC (Applicant/Owner); Assessor ID 60-D-45; Owner is seeking a side yard setback variance to move the property line to bring an existing pavilion onto the property located at 200 Gore Road. Said site is located within both a Lake Residential (LR) and Lake Watershed Protection (LWP) zoning districts.

Mr. Piader opened the public hearing. Mr. Daggett read the public hearing notice. Mr. Piader asked for the staff review. Ms. Morgan presented the proposed plan on the screen for all to see. The plan for both applications are the same and shows several changes in property lines but that the only portion of the plan under consideration for the Board is the change to move the property line of 200 Gore Road to wrap around the existing pavilion on the property. That change would provide for two side yard setbacks for both the pavilion and the house on 27 Lakeview Road both of which would not meet the side yard setback requirements for either the Lake Residential (LR) zoning district (10 feet) or requirements for 27 Lakeview Road or the Business 5 (B5) zoning district requirements for 200 Gore Road (15 feet). She noted that the zoning district line between LR and B5 runs along this property line. The Board is considering just the side yard setbacks proposed in the application. If the variances are granted the pavilion will be moved onto the property at 200 Gore Road but would still have the use violation of a commercial use located in a residential district. Moving the property line does not change for that portion of the lot and that portion of the pavilion would still be in violation. This issue has been discussed with Town Counsel and the Building Commissioner. She noted that there is



documentation from the Assessor showing that the pavilion was constructed and has been in that location for over 30 years. It was built over the property line. If the then property owner of 27 Lakeview Road had raised objections to that construction it would have been a civil matter. Moving the lot line is not an expansion of the B5 zoning district. Any expansion of a zoning district requires Town Meeting action. The Board does not have the authority or jurisdiction to move that lot line and change the zoning. The portion of the pavilion encroaching into the LR zone is and will continue to be in violation of the Zoning By-law which does not allow commercial uses in a LR zone. That encroachment requires enforcement from the Building Commissioner. The Building Commissioner is aware of the violation and has stated his intent to issue a zoning violation and enforcement order with the property owner of 200 Gore Road letting them know that the only way to lift that order is to slice off the portion of the pavilion and any other structure such as the retaining wall that is in the LR zone. The setbacks for the B5 zone for that structure do not apply as it is a pre-existing, non-conforming structure in accordance with Massachusetts General Law. She displayed the documentation from the Assessor and a recent photo of the site on the screen for all to see.

Mr. Piader asked if there were any questions from the Board. Mr. Daggett asked for further clarification. He thought that moving the property line might actually result in expanding the B5 zoning district because it would be adding square footage. Ms. Morgan noted that it would not physically expand the zoning district which can only be authorized by Town Meeting. That portion of the pavilion would still straddle the zoning district line regardless of a potential change in property line. There were no other questions from the Board. Mr. Daggett asked if there was an aerial photo showing exactly what portion of the pavilion was being discussed. Was it just the overhang or was the structural column in the photo also in violation? Ms. Morgan noted that the portion of pavilion encroaching into the LR zone hadn't been measured out but it would have to be done once the Building Commissioner issues his enforcement order. It was her impression that the overhang and the noted column would have to be removed and that the pavilion would have to be reconstructed to bring the structure into compliance. Mr. Piader noted that a change in zoning will require a 2/3 vote at Town Meeting. There were no other questions from the Board.

Mr. Piader asked the Applicant to present his comments. Due to technical difficulties, Mr. Balcewicz, representing the Applicant, was delayed in presenting the application. Mr. Daggett asked if the Webster Ventures LLC owned both properties in question to which the answer was yes. She noted that until the issue of the encroachment into the LR zone is solved through the enforcement order issued by the Building Commissioner, the pavilion will always be in violation of zoning. If the variances are granted they would still need Town Meeting action to change the zoning. Ms. Morgan noted that the decision deadline was March 23, 2022 and the Board could continue the hearing to the February 1, 2022 meeting if the technical difficulties cannot be solved. Mr. Piader provided a point of clarification from the previous meeting. The issue of why the Applicant wasn't informed by Town staff about the need for the Lakeview Road application was addressed. Mr. Piader noted that, after some research, he has learned that the role of the Building Department is to take the application and to not give advice. If they were to do so, it would be considered legal advice making them, and the Town, a party to the application which would be a conflict of interest. They don't have the ability to interpret or make legal suggestions when someone files an application. Their limitation is to make you aware of the zoning sections and where they are located.

Stephen Balcewicz, representing the Applicant, stated that Ms. Morgan had given a pretty precise overview of the situation. He noted that the reason for the request was to clear the title for 27 Lakeview Road. The pavilion is located on property owned by Indian Ranch LLC and 27 Lakeview Road was



owned by Webster Ventures LLC which are two separate entities. Both lots are owned by the same people but the companies are under two different names. He noted that moving that portion of the pavilion would require a structural engineer which would be a costly burden. The relief requested for both properties would help clear the title for 27 Lakeview Road so that it can be sold.

Mr. Piader noted that Webster Ventures LLC has been taking down single family homes on property they own in the area. Mr. Balcewicz noted that Webster Ventures LLC owns several properties on both sides of Lakeview Road which are adjacent to 200 Gore Road. He reviewed the other properties noting that some of the lots are vacant. Mr. Piader asked if the intent was to change the zoning from LR which is a single family zone with this application. Mr. Balcewicz stated that they only wanted to clear the title to sell 27 Lakeview Road without having the pavilion on that property.

Mr. Piader noted the proposed 5.9 feet setback proposed and how they got to that measurement. Mr. Balcewicz noted the measurement was chosen to include the existing retaining and railing onto the property. The pavilion was constructed so that the people for the 1980's and 1990's could somewhere to have an outdoor picnic. It is currently being used for storing tables, chairs and equipment in the winter to get items out of the inclement weather. In the summer it's used for outdoor seating. Mr. Piader asked if the requested 5.9 foot setback would encompass the retaining wall. Mr. Balcewicz noted that the wall goes right across it as shown on the plan. Mr. Piader asked if their argument was that there were special circumstances because of the pre-existing structure and that moving it would involve a financial hardship to which the answer was yes. Mr. Balcewicz added that an additional financial hardship is that the title for 27 Lakeview Road would not be clear.

Mr. Piader asked if there were any questions from the Board. Mr. Cournoyer asked if the house on 27 Lakeview Road would be coming down. Mr. Balcewicz stated that they were selling it and he did not know. Mr. Piader asked if there were any further questions from the Board. There were none. He opened the meeting to comments from the public.

Faith Rubin, 59 Lakeview Road, addressed the Board. She stated that, due to COVID, a number of her neighbors on Lakeview Road could not be involved with this meeting and that she was representing them. They feel that this is an encroachment, that there's too much congestion as is, and that this is a residential neighborhood and asked that there be no encroachment of commercial uses into a residential zone.

Lori Kiymiller, 14 Browns Brook Road, addressed the Board. She noted that her house kind of backs up to 200 Gore Road and she can see the pavilion from her property. She asked if they would have to move the pavilion if they couldn't sell 27 Lakeview Road. Mr. Piader stated that it wouldn't have to move because it was a pre-existing, non-conforming structure. Massachusetts has a 20 year statute of limitations and if a structure is over 20 years old, it can't be moved.

Mr. Piader asked if anyone else would like to make a comment. There were none. He asked if the Applicant's representative would like to make a final statement. Mr. Balcewicz stated that they demonstrated that the pavilion was constructed in the late 1970's. They are not seeking anything other than to bring the existing pavilion and the 3 foot high retaining wall onto the property at 200 Gore Road owned by Indian Ranch LLC. The retaining wall was constructed for two reasons – create the flat area underneath the pavilion and to hold up the material to create that flat area. A guard rail runs along the top of that wall. A variance is required to take that pavilion and retaining wall out of violation which is why they have to create the little jog in the property line. Unfortunately the house at 27

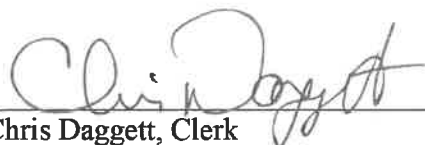
Lakeview Road is built close the property line as well. The hardship is that they would like to clear the title in order to sell 27 Lakeview Road. Mr. Piader asked if a retaining wall is considered a structure. Ms. Morgan replied yes. She noted that clearing the title at 27 Lakeview Road by moving the property line does not eliminate the zoning violation which will continue to exist in terms of the commercial use still encroaching into the residential district. Mr. Piader noted if there is still a structure that spans both properties that variances for both properties does not resolve the issue and wondered if the whole house would have to move. Ms. Morgan stated that only one of two issues would be resolved with the variance requests. When the Building Commissioner issues his enforcement order to remove that portion of the pavilion out of LR district it will become a problem and legal matter for the property owners. Ms. Morgan noted that the side yard setback in the LR zone is 10 feet and the proposed variance is to reduce it to 2.5 feet. Mr. Balcewicz noted that the minimum lot size in the LR zone is 5,000 square feet and that the lot at 27 Lakeview Road has 10,600 square feet which is more than double the size required and not typical for the LR zone.

Mr. Piader asked if there was a motion to close the public hearing. Motion to close the public hearing for 200 Gore Road and 27 Lakeview Road made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote Mr. Daggett – AYE; Mr. Mason – AYE; Mr. Fales – AYE; Mr. Cournoyer – AYE; Mr. Piader – AYE.

**3. Next Meeting Date:** February 7, 2022 at 6:00 p.m. via remote participation / Zoom.

#### **4. Adjournment**

Motion to adjourn the meeting made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed unanimously 5-0 by roll call vote: Mr. Daggett - yes; Mr. Mason - yes; Mr. Fales - yes; Mr. Cournoyer – yes; Mr. Piader - yes. The meeting was adjourned at 7:52 p.m.

  
Chris Daggett, Clerk

  
Date

#### **EXHIBITS**

Public Hearing 3A - Variance Application – 62 Blueberry Hill – Jay Gallant / Gallant Architects (Applicant); Jessica and Drew Mason (Owners)

- Mullin Rule Certification; signed by Zoning Board of Appeals member Dan Cournoyer on December 14, 2021, stamped by the Town Clerk on December 15, 2021; 1 page.
- Town of Webster Zoning Board of Appeals Memorandum to Abutters from Ann Morgan, Director of Planning & Economic Development; Zoning Board of Appeals Meeting Rescheduled to January 12, 2022; dated January 3, 2022; 3 pages.
- Building Permit 5704 Activity Log; Viewpoint System; dated December 22, 2020 through April 29, 2021; 4 pages.
- Building Permit 5704 Activity Log, Planning Department Comments between Ann Morgan, Director of Planning and Economic Development and Jessica Mason; dated January 8, 2021; Viewpoint System; 3 pages.
- Subsurface Septic System Design; prepared by McClure Engineering, Inc.; dated September 17, 2020; 24" x 36"; 1 sheet.

Public Hearing 3B - Variance Application – 70 Bates Point Road – Hadeer Shaikhly (Applicant/Owner)

- Application packet submitted and stamped by the Town Clerk on December 9, 2021; includes the following documents:
  - Certified Abutters List; dated November 22, 2021; 3 pages.
  - Concept Photos; submitted December 9, 2021; color; 2 pages.
  - Deed; submitted on December 9, 2021; 2 pages.
  - Form; Application for Variance; dated December 8, 2021 and received on December 9, 2021; 4 pages.
  - Zoning Board of Appeals Site Plan 70 Bates Point Road, Webster MA; prepared by H.S. & T. Group, Inc.; dated December 8, 2021; 24"x36"; 2 sheets.
- Town of Webster Zoning Board of Appeals Public Hearing Notice; stamped by Town Clerk on December 13, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Building Department; dated and received December 13, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Water and Sewer Department; dated and received December 14, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Health Department; dated and received December 14, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Police Department; dated and received December 15, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Highway Department, dated and received December 15, 2021 1 page.
- Correspondence; Letters of Support from various abutters; dated December 15, 2021 through December 27, 2021 and received December 29, 2021; 13 pages.
- Correspondence; Memorandum from Ann Morgan, Director of Planning and Economic Development to the Abutters; Zoning Board of Appeals Meeting Rescheduled to January 12, 2022; dated January 3, 2022; 3 pages.
- Correspondence; Comments from Frank Yacino, 72 Bates Point Road; dated January 4, 2022 and received January 11, 2022; 1 page.
- Correspondence: Front Yard Measurements; submitted by Hadeer Shaikhly; 70 Bates Point Road; received January 12, 2022; 1 page.
- Correspondence; Memorandum to the Zoning Board of Appeals from Ann Morgan, Director of Planning & Economic Development, and Ted Tetreault, Building Commissioner and Zoning Enforcement Officer; Staff Review: Front Yard Setback Variance Application – 70 Bates Point Road; dated January 12, 2022; 5 pages.

Public Hearing 3C - Variance Application – 200 Gore Road – Webster Ventures LLC (Applicant/Owner)

- Disclosure by Non-Elected Municipal Employee of Financial Interest and Determination by Appointing Authority as Required by G.L. c.268A, § 19; submitted by Chris Daggett; dated December 7, 2021; 2 pages.
- Town of Webster Zoning Board of Appeals Sign In Sheet; dated December 7, 2021; 2 pages.
- Correspondence; Comments submitted by Faith Rubin, 5 Lakeview Road; dated and received December 30, 2021; 1 page.
- Town of Webster Zoning Board of Appeals Memorandum to Abutters from Ann Morgan, Director of Planning & Economic Development; Zoning Board of Appeals Meeting Rescheduled to January 12, 2022; dated January 3, 2022; 3 pages.

- Correspondence; Request to Extend the Decision Deadline; submitted by Stephen Balcewicz, B.C. Engineering and Survey, Inc.; dated and received January 11, 2022; 2 pages.
- Mullin Certification signed by Dan Cournoyer, dated December 14, 2021; 1 page.

Public Hearing 3D - Variance Application – 27 Lakeview Road – Webster Ventures LLC (Applicant/Owner)

- Application packet submitted and stamped by the Town Clerk on December 13, 2021; includes the following documents:
  - Certified Abutters List; dated December 10, 2021 and received December 13, 2021; 3 pages.
  - Deed; received December 13, 2021; 2 pages.
  - Form; Variance Application; dated and received December 13, 2021; 3 pages.
  - Plan of Property; prepared by Jarvis Land Survey, Inc.; dated April 21, 2021 and received December 13, 2021; 24" x 36"; 1 sheet.
  - Plan of Land; prepared by J&D Civil Engineers, LLC, dated October 2015 and received December 13, 2021; 24" x 36"; 1 sheet.
  - Property Card and Hand Drawn Plans; received December 13, 2021; 6 pages.
- Town of Webster Zoning Board of Appeals Public Hearing Notice; stamped by Town Clerk on December 13, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Conservation Department; dated and received December 14, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Health Department; dated and received December 14, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Water and Sewer Department; dated and received December 14, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Fire Department; dated and received December 14, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Police Department; dated and received December 15, 2021; 1 page.
- Correspondence; Comments submitted by the Office of the Town Administrator; dated and received December 15, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Building Department; dated and received December 15, 2021; 1 page.
- Correspondence; Comments submitted by the Town of Webster Highway Department; dated and received December 15, 2021; 1 page.
- Disclosure by Non-Elected Municipal Employee of Financial Interest and Determination by Appointing Authority as Required by G.L. c. 268A, § 19, submitted by Zoning Board of Appeals Member Christopher Daggett, dated December 7, 2021; 2 pages.
- Town of Webster Zoning Board of Appeals Memorandum to Abutters from Ann Morgan, Director of Planning & Economic Development; Zoning Board of Appeals Meeting Rescheduled to January 12, 2022; dated January 3, 2022; 3 pages.
- Property Card and Hand Drawn Plans; received on January 3, 2022; 7 pages.
- Quitclaim Deed; received on January 3, 2022; 7 pages.
- Correspondence; Comments from Valerie Smith, 17 South Shore Road; dated and received on January 5, 2022; 1 page.